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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 JESSICA SEYMOUR,

11 Plaintiff,

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14 vs.
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PETERS AND FREEDMAN LLP, ESCALA
MASTER HOME OWNERS
ASSOCIATION, TERRACES HOME
OWNERS ASSOCIATION, KENNETH
KRAUSE, BEN KLINGER, ALBERT
MACHHOUR, KEVIN ENRIGHT,
VERONICA ORONA-KLINGER, LINDA
BULL, DAVID MILLER, KEITH
PHILLIPS, ROBERT TARTARO, MARCEE
CHIPMAN, MATHEW CAROLL,
CATNINE DIXSON,

26 Defendants.
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CASE NO. 11-CV-2153 - IEG (CAB)

ORDER:

**(1) GRANTING PLAINTIFF'S
MOTION TO PROCEED IN
FORMA PAUPERIS;**

[Doc. No. 2]

**(2) SUA SPONTE DISMISSING
COMPLAINT**

[Doc. No. 1]

**(3) DENYING AS MOOT MOTION
FOR APPOINTMENT OF
COUNSEL; MOTION FOR STAY
OF FORECLOSURE
PROCEEDINGS; AND MOTION
FOR DISCLOSURE OF
INFORMANT'S IDENTITY**

[Doc. Nos. 3-5]

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1 Plaintiff commenced this action on September 16, 2011, alleging her civil rights were
 2 violated. [Doc. No. 1.] Along with her Complaint, Plaintiff submitted a motion to proceed *in*
 3 *forma pauperis*, a motion for the appointment of counsel, a motion for stay of foreclosure
 4 proceedings, and motion for disclosure of the identity of an informant. [Doc. Nos. 2-5.] Having
 5 considered Plaintiff's request, the Court **GRANTS** Plaintiff leave to proceed *in forma pauperis*,
 6 **DISMISSES WITHOUT PREJUDICE** Plaintiff's Complaint, and **DENIES** as moot Plaintiff's
 7 remaining motions.

8 DISCUSSION

9 **I. MOTION TO PROCEED IN FORMA PAUPERIS**

10 All parties instituting any civil action, suit, or proceeding in a district court, except an
 11 application for writ of habeas corpus, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a).
 12 However, an action may proceed despite failure to pay the filing fee if the party is granted an *in*
 13 *forma pauperis* ("IFP") status. See Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999). The
 14 Court may grant IFP status to any party who demonstrates that he or she is unable to pay such fees
 15 or give security therefor. 28 U.S.C. § 1915(a).

16 In the present case, having reviewed Plaintiff's motion and declaration in support of the
 17 motion, the Court finds that Plaintiff has made a sufficient showing of inability to pay the required
 18 filing fees. See Rodriguez, 169 F.3d at 1177. Accordingly, good cause appearing, the Court
 19 **GRANTS** Plaintiff leave to proceed *in forma pauperis*.

20 **II. INITIAL SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)(B)**

21 After granting IFP status, the Court must dismiss the case if the complaint "fails to state a
 22 claim on which relief may be granted" or is "frivolous." 28 U.S.C. § 1915(e)(2)(B); see also Lopez
 23 v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not
 24 only permits but requires" the court to *sua sponte* dismiss an *in forma pauperis* complaint that fails
 25 to state a claim). In order to properly state a claim for relief, "a complaint must contain sufficient
 26 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v.
 27 Iqbal,—U.S.—, 129 S. Ct. 1937, 1949 (2009). A complaint must contain more than a "labels and
 28 conclusions" or a "formulaic recitation of the elements of a cause of action;" it must contain factual

1 allegations sufficient to “raise a right to relief above the speculative level.” Bell Atlantic Corp. v.
 2 Twombly, 550 U.S. 544, 555 (2007). ““The pleading must contain something more . . . than . . . a
 3 statement of facts that merely creates a suspicion [of] a legally cognizable right of action.”” Id.

4 A complaint is frivolous “where it lacks an arguable basis either in law or in fact.” Neitzke
 5 v. Williams, 490 U.S. 319, 325 (1989) (superseded on other grounds as stated in Lopez v. Smith,
 6 203 F.3d 1122, 1126 (9th Cir. 2000)). Where a complaint fails to state “any constitutional or
 7 statutory right that was violated, nor asserts any basis for federal subject matter jurisdiction,” there
 8 is no “arguable basis in law” under Neitzke, and the court on its own initiative may decline to
 9 permit the plaintiff to proceed and dismiss the complaint under Section 1915. Cato v. United
 10 States, 70 F.3d 1103, 1106 (9th Cir. 1995).

11 Plaintiff brings the present action against Defendant Peters and Freedman LLP, Escala
 12 Master Home Owners Association, Terraces Home Owners Association, Kenneth Krause, Ben
 13 Klinger, Albert Machhour, Kevin Enright, Veronica Orona-Klinger, Linda Bull, David Miller,
 14 Keith Phillips, Robert Tartaro, Marcee Chipman, Mathew Carroll and Catnine Dixson. [Doc. No.
 15 1.] Plaintiff’s complaint alleges two causes of action: (1) violation of her civil rights pursuant to 42
 16 U.S.C. § 1983; and (2) civil conspiracy to covert real property pursuant to 42 U.S.C. § 1985. [Id.]

17 **A. Plaintiff’s § 1983 claim**

18 Section 1983 creates a cause of action against any person who, acting under color of state
 19 law, deprives a person of his or her constitutional rights. See 42 U.S.C. § 1983. To state a claim
 20 for relief under section 1983, Plaintiff must plead two essential elements: (1) that the individual
 21 defendants acted under color of state law; and (2) that they caused her to be deprived of a right
 22 secured by the Constitution and laws of the United States.” Johnson v. Knowles, 113 F.3d 1114,
 23 1117 (9th Cir. 1997). A person acts under color of state law if he “exercise[s] power ‘possessed by
 24 virtue of state law and made possible only because the wrongdoer is clothed with the authority of
 25 state law.’” West v. Atkins, 487 U.S. 42, 49 (1988) (quoting United States v. Classic, 313 U.S.
 26 299, 326 (1941)). Section 1983 “excludes from its reach merely private conduct, no matter how
 27 discriminatory or wrongful.” American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999)
 28 (citation and internal quotation marks omitted).

1 Plaintiff's complaint is frivolous and fails to state a claim under section 1983. Plaintiff's
 2 23-page complaint is comprised of a long string of events containing vague and conclusory
 3 allegations regarding an alleged "law enforcement and intelligence vendetta." [Doc. No. 1.] The
 4 complaint is unclear on what events form the basis of Plaintiff's claim and how the named
 5 Defendants were involved in these events. In addition, Plaintiff appears to be attempting to
 6 challenge her foreclosure proceedings. [See Doc. No. 1 Ex. 1, (attaching notice of trustee's sale to
 7 complaint); Doc. No. 5 (motion to stay foreclosure proceedings).] However, a § 1983 civil rights
 8 action is not the proper vehicle to challenge foreclosure proceedings because non-judicial
 9 foreclosure proceedings are a purely private remedy and not state action. See Apao v. Bank of New
 10 York, 324 F.3d 1091, 1092-95 (9th Cir. 2003) (holding nonjudicial foreclosure sale of property
 11 does not constitute state action), cert. denied, 540 U.S. 948 (2003); Charmicor, Inc. v. Deaner, 572
 12 F.2d 694, 695-96 (9th Cir.1978) (holding same). Accordingly, the Court dismisses without
 13 prejudice Plaintiff's § 1983 claim.

14 **B. Plaintiff's § 1985 claim**

15 Plaintiff has also asserted a cause of action for civil conspiracy pursuant to 42 U.S.C. §
 16 1985. A claim brought for violation of section 1985 requires four elements: (1) a conspiracy; (2)
 17 for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal
 18 protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in
 19 furtherance of this conspiracy; (4) whereby a person is either injured in his person or property or
 20 deprived of any right or privilege of a citizen of the United States. See Sever v. Alaska Pulp Corp., 978
 21 F.2d 1529, 1536 (9th Cir. 1992) (citation omitted). A racial, or perhaps otherwise class-based,
 22 invidiously discriminatory animus is an indispensable element of a section 1985 claim. Sprewell v.
 23 Golden State Warriors, 266 F.3d 979, 989 (9th Cir. 2001); see also Griffin v. Breckenridge, 403
 24 U.S. 88, 102 (1971) ("The language requiring intent to deprive of equal protection . . . means that
 25 there must be some racial, or perhaps otherwise class-based invidiously discriminatory animus
 26 behind the conspirators' action.").

27 To state a claim of conspiracy under § 1985, a plaintiff must allege facts with sufficient
 28 particularity to show an agreement or a meeting of the minds to violate her constitutional rights.

1 Margolis v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998); Woodrum v. Woodward County, 866 F.2d
 2 1121, 1126 (9th Cir. 1989). “Vague and conclusory allegations of official participation in civil
 3 rights violations are not sufficient to withstand a motion to dismiss.” Ivey v. Board of Regents, 673
 4 F.2d 266, 268 (9th Cir. 1982); Karim-Panahi v. Los Angeles Police Dep’t, 839 F.2d 621, 626 (9th
 5 Cir. 1988) (“[a] mere allegation of conspiracy without factual specificity is insufficient”).

6 Plaintiff’s complaint contains only vague and conclusory allegations of a conspiracy.
 7 Plaintiffs complaint does not allege facts showing an agreement by Defendants with sufficient
 8 particularity to state a claim for civil conspiracy under section 1985. See Karim-Panahi, 839 F.2d
 9 at 626; Ivey, 673 F.2d at 268. In addition, in an effort to challenge her nonjudicial foreclosure
 10 proceedings, Plaintiff’s complaint appears to be alleging that Defendants conspired to convert her
 11 real property. However, Plaintiff’s complaint does not contain allegations showing that there was
 12 some “invidiously discriminatory animus” behind her foreclosure proceedings. Accordingly, the
 13 Court dismisses without prejudice Plaintiff’s § 1985 claim.¹

14 **III. PLAINTIFF’S REMAINING MOTIONS**

15 In addition to her complaint, Plaintiff has also filed a motion for appointment of counsel, a
 16 motion to stay her foreclosure proceedings, and a motion for disclosure of the identity of an
 17 informant. [Doc. Nos. 3-5.] Because the Court dismisses Plaintiff’s complaint in its entirety
 18 without prejudice, Plaintiff’s motions are **DENIED** as moot.

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26 ¹ The Court notes that Plaintiff has filed other complaints in this district containing similar
 27 allegations that were screened pursuant to section 1915 and dismissed for failure to state a claim. See
 28 Seymour v. United States Department of Defense, No. 10-cv-770 (S.D. Cal., filed Apr. 13, 2010 [Doc.
 No. 4]), affirmed by Seymour v. United States Department of Defense, No. 10-55597 (9th Cir., Jun.
 15, 2010 [Doc. No. 10]); Seymour v. Department of Homeland Security, No. 10-cv-678 (S.D. Cal.,
 filed Mar. 30, 2010 [Doc. No. 5]); see also Seymour v. State of California, No. 10-cv-1155 (S.D. Cal.,
 removed May 28, 2010).


1 **CONCLUSION**

2 Based on the foregoing, the Court **GRANTS** Plaintiff's Motion to Proceed *in Forma*
3 *Pauperis* pursuant to 28 U.S.C. § 1915(a), but **DISMISSES WITHOUT PREJUDICE** Plaintiff's
4 complaint as frivolous and for failing to state a claim upon which relief can be granted. The Court
5 also **DENIES** as moot Plaintiff's motion for appointment of counsel, motion to stay foreclosure
6 proceedings, and motion for disclosure of the identity of informant.

7 Plaintiff is **GRANTED** thirty (30) days from the date this Order is filed to file a First
8 Amended Complaint addressing the deficiencies of the pleading set forth above. Plaintiff is
9 cautioned her First Amended Complaint must be complete in itself, without relying on references to
10 the original Complaint. Plaintiff is further cautioned any defendant not named or claim not
11 re-alleged will be considered waived. See King v. Attiyeh, 814 F.3d 1172, 1177-79 (9th Cir. 1996).

12 **IT IS SO ORDERED.**

13 **DATED:** September 20, 2011

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15 **IRMA E. GONZALEZ, Chief Judge**
16 **United States District Court**
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